U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]ublic Copy

FILE: [redacted] Office: Miami Date: AUG 10 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director denied the application after determining that the applicant entered the United States as a stowaway and that he was not inspected and admitted or paroled into the United States.

The applicant has provided no statement or additional evidence on notice of certification.

Section 212(a)(6)(D) of the Act provides that any alien who is a stowaway is inadmissible to the United States and is ineligible to receive a visa. Further, the applicant bears the burden of proving that he in fact presented himself for inspection as an element of establishing eligibility for adjustment of status. Matter of Arequillin, 17 I&N Dec. 308 (BIA 1980).

Matter of M/V "South African Victory", 12 I&N Dec. 253 (BIA 1967), held that an intent to conceal one's self aboard a United States bound vessel for the purpose of obtaining passage thereon is an element essential to constituting an alien as a stowaway within the meaning of section 273(d) of the Act, 8 U.S.C. 1323. The Board stated that it has been judicially held a stowaway is one who conceals himself aboard an out-going vessel for the purpose of obtaining free passage. The courts have also ruled it is quite clear that the word "stowaway" is used to indicate one who steals his passage. Likewise, it has been judicially stated that to justify the conviction of a person for stowing away on a vessel it is necessary to establish intent to go and remain on board without paying for a ticket and that accidental remaining on board does not suffice.

On September 30, 1996, section 361 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1966 (IIRAIRA) amended the Immigration and Nationality Act (the Act) by adding a definition of stowaway:

> The term "stowaway" means any alien who obtains transportation without the consent of the owner, charterer, master or person in command of any vessel or aircraft through concealment aboard such vessel or aircraft. A passenger who boards with a valid ticket is not to be considered a stowaway.

The record reflects that on July 28, 1970, the applicant appeared at the Service office in Newark, New Jersey, and claimed that he entered the United States as a stowaway on board an unknown vessel which arrived in Miami, Florida, on July 26, 1970. In a sworn statement before a Service officer, the applicant stated that he boarded the vessel in Grand Cayman Island on the night of July 22, 1970, and to have taken on board food and clothing and hidden in the cargo hold. He claimed to have stayed hidden the whole four or five days the trip took and to have slipped off the vessel in Miami and took a cab to the home of a Cuban refugee. He was subsequently taken to the Miami airport for a flight to Newark where his father resides. The applicant stated he received no assistance in boarding or leaving the vessel.

Information obtained by the Service reflects that the vessel M/V [redacted] arrived in Miami on July 26, 1970 from Georgetown, Cayman Islands, but declared that no stowaways were on board the vessel. The applicant was subsequently granted an indefinite voluntary departure on June 16, 1971. On October 30, 1979, and again on June 10, 1982, the applicant was issued Refugee Travel Documents, Form I-570. There is no evidence in the record that the applicant was subsequently inspected and admitted or paroled into the United States based on the issuance of these documents.

An alien is classified a stowaway in the event that neither the arriving alien, nor the carrier, can produce any documentary evidence that the alien boarded the vessel or aircraft with the consent of the carrier. Such alien may be found inadmissible to the United States pursuant to section 212(a)(6)(D) of the Act for which no waiver is available. The applicant has failed to present evidence to overcome the district director's findings that he was a stowaway and that he was not inspected and admitted or paroled into the United States.

Although not addressed by the district director, the Federal Bureau of Investigation (FBI) report, contained in the record of proceeding, shows that the applicant was arrested in New Jersey for the following:

1. Arrested on December 13, 1990 for (1) possession of controlled dangerous substance, (2) intent to distribute controlled dangerous substance, and (3) possession of controlled substance in school zone.

2. Arrested on December 14, 1990 for (1) possession of controlled dangerous substance, (2) possession with intent, (3) distribute controlled dangerous substance, (4) conspiracy to distribute, and (5) distribute near school. It is not clear from the FBI report if this arrest is related to paragraph 1 above.

Section 212(a)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2), provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

> (A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of --
>
> (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802).
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> (C) Any alien who the consular officer or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, is inadmissible.

A conviction of possession and trafficking of a controlled substance may render the applicant inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act. However, the arrest reports and the final court dispositions of the above arrests are not included in the record of proceeding. The Service must address these arrests and/or convictions in any future decisions or proceedings.

The applicant is ineligible for adjustment of status to permanent resident pursuant to section 1 of the Act of November 2, 1966. The decision of the district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.